

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Intrastate Access Recovery  
Fee Filed by Telecom\*USA and MCI  
WorldCom Communications

ISSUE DATE: November 24, 2004

DOCKET NOS. P-478/EM-04-982  
P-478/EM-04-983

ORDER REJECTING INTRASTATE  
RECOVERY FEE CHANGES

**PROCEDURAL HISTORY**

On June 29, 2004, MCI WorldCom Communications, Inc. (MCI) and Teleconnect Company d/b/a Telecom\*USA, a subsidiary of MCI, filed petitions to, among other things, increase their intrastate access recovery fee from \$1.95 per month to \$2.50 per month. Telecom\*USA's filing was assigned Docket No. P-478/EM-04-982 and MCI WorldCom's filing was assigned Docket No. P-3012/M-04-983.

On August 19, 2004, the Minnesota Department of Commerce (DOC) filed comments opposing the rate increase.

On August 30, 2004, the Residential and Small Business Utilities Division of the Office of Attorney General (RUD-OAG) filed comments opposing the rate increase.

On September 16, 2004, MCI and Telecom\*USA (the petitioners) filed comments opposing the recommendations of the Department and the OAG-RUD.

The matter came before the Commission on October 21, 2004.

**FINDINGS AND CONCLUSIONS**

**I. The Legal Standard**

As telecommunications carriers, MCI and Telecom\*USA are exempt from rate of return regulation. Minn. Stat. §§ 237.01, subd. 6; 237.74, subd. 4. Nevertheless

Charges contained on telephone bills must be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered. The description must be sufficiently clear in presentation and specific enough in content

so that customers can accurately assess that the services for which they are billed correspond to those that they have requested and received, and that the costs assessed for those services conform to their understanding of the price charged.<sup>1</sup>

The Commission executes its regulatory duties regarding telecommunications to maintain just and reasonable rates, promote customer choice, and maintain consumer protections. Minn. Stat. § 237.011.

## **II. The Intrastate Access Recovery Charge**

The Commission previously permitted the petitioners to charge a \$1.95 per month fee for the purpose of recovering the amount that local telephone companies charge long-distance carriers to originate or terminate long-distance calls that begin and end within Minnesota (intrastate long distance).<sup>2</sup> The petitioners now propose to increase this fee to \$2.50 per month.

## **III. Positions of the Parties**

### **A. DOC and RUD-OAG**

The DOC and RUD-OAG maintain their opposition to permitting the petitioners to charge an intrastate access recovery fee as a separate line item on customer bills and recommend that the Commission reject their proposal to increase that fee.

The commentators acknowledge that long-distance carriers such as MCI and Telecom\*USA have broad discretion in setting their rates, including the right to charge monthly fees. But they argue that long-distance carriers do not have the discretion to set their rates in a deceptive or confusing manner.

Competition requires that consumers be able to compare the prices charged by competing carriers. By recovering ever greater costs through a line-item fee, the commentators argue, the petitioners are able to keep their advertised monthly and per-minute rates comparatively low, confusing the public about how the petitioners' rates compare to competitors' rates. The DOC and the RUD-OAG note that the National Association of State Utility Consumer Advocates has filed a complaint with the Federal Communications Commission (FCC) alleging that such line items are misleading and

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<sup>1</sup> 47 C.F.R. § 64.2401(b). The Commission has authority to enforce federal truth-in-billing rules regarding intrastate service. *In the Matter of Truth-in-Billing and Billing Format*, CC Docket No. 98-170, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72 (April 15, 1999), ¶ 26.

<sup>2</sup> *In the Matter of the Intrastate Access Recovery, or Similar Charges, Filed by AT&T Communications, Sprint Communications, MCI WorldCom, Excel Communications, Teleconnect, U.S. Telecom Long Distance*, Docket Nos. P-442/EM-02-539, P-446/EM-02-1154, P-3012/M-02-1456, P-478/EM-02-1692, P-478/EM-02-2031, P-6075/M-03-41 (*Intrastate Access Recovery I*) ORDER ALLOWING INTRASTATE RECOVERY CHARGES (November 5, 2003).

violate the FCC's Truth-in-Billing order.<sup>3</sup>

Finally, the commentors observe that MCI and Telecom\*USA fail to provide any support for their proposed \$2.50 rate level. Absent such information, the commentors argue, the Commission lacks a basis for evaluating whether the proposed charges are just and reasonable. RUD-OAG expresses concern that the proposed fee may permit the petitioners to recover more money than needed to offset intrastate access costs.

#### B. MCI and Telecom\*USA

The petitioners oppose the recommendations of the Department and the OAG-RUD. They note that their proposed tariff is similar to their prior tariff except for the fee level. The petitioners argue that the commentors fail to show that the proposed \$2.50 per month level is not appropriate, or that the initial \$1.95 per month fee fully recovered costs associated with intrastate access service.

The rest of the petitioners' comments are unrelated to the level of the proposed fee. The petitioners assert that the Commission has already considered arguments against permitting an intrastate access charge line-item, and has rejected them.

#### IV. Commission Action

No party disputes the petitioners' discretion to raise rates; the only dispute arises around the proposal to raise the rate characterized as the rate recovering intrastate access charges.

The Commission permitted the petitioners' first intrastate access charge fee proposal in spite of concerns that the fee might cause customer confusion, might not be causally related to the cost of access charges, and might permit long-distance companies to over-recover their costs. The Commission acknowledged that it lacked jurisdiction over the amount of revenues collected by long-distance carriers. The Commission concluded that the carriers' proposed customer notice would be sufficient to avoid confusion. And the Commission noted that long-distance carriers, including MCI, stated without contradiction that the proposed charge is calculated by dividing the amount of uneconomic access elements by the number of customers subject to the charge.<sup>4</sup> Given the Commission's limited jurisdiction over the rates of long-distance companies, this was a sufficient basis to defeat the challenge raised to the first intrastate line item.

As the petitioners note, the current case is much like the initial case. But it differs in one important respect: the accuracy of the proposed \$2.50 fee is not uncontradicted. Specifically, it is contradicted by the statements in the prior case justifying the \$1.95 fee.

Neither petitioner can entirely explain why it proposes a different rate in the current docket than in the past. Petitioners claim that it would be reasonable to expect some increase in fees because they

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<sup>3</sup> See *supra*, n.1

<sup>4</sup> *Intrastate Access Recovery I*, Sprint and MCI WorldCom reply comments (March 5, 2003) at 2.

have lost customers since the last case. But upon questioning, the petitioners could not claim that their access costs had increased, or that the new ratio of monthly intrastate access costs to customers equaled \$2.50. In short, the petitioners could not say how the \$2.50 figure was derived.

Absent such a showing, the Commission will reject the proposed change in the monthly intrastate access charge fee as inconsistent with the best available evidence. But the Commission does not foreclose considering future requests to change the intrastate access fee, provided petitioners can support their requests. Moreover the petitioners retain the discretion to increase rates generally, provided they do not attempt to characterize those increases in a manner inconsistent with the evidence.

### **ORDER**

1. The increases to the monthly intrastate access recovery fee proposed by Telecom\*USA and MCI WorldCom are hereby rejected.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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